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IFES Report Recommends Changes to Yemen's Election Law

SANA'A – April 19, 2005 – IFES-Yemen has submitted a report to the Supreme Commission for Elections and Referendum (SCER) recommending significant changes to Yemen's election law.

IFES-Yemen Country Director Dr. Paul Harris said that the country's 2003 parliamentary elections are recognized as a significant improvement on previous elections. However, they also suggested that amendments need to be made to the election law before the presidential and local council elections scheduled for 2006 and the parliamentary elections due in 2009. These amendments should improve the impartiality and transparency of the electoral process and deal with a number of omissions, procedural gaps and technical issues in the law.

The report is the result of a year-long process of consultations and discussions with the SCER, with representatives of 13 political parties and with local and domestic NGOs. This transparent, participatory approach to law reform helps strengthen democratic governance. IFES provided a neutral venue for group representatives to express concerns about necessary changes to the law and suggest improvements.

The report contains a total of 56 recommendations for amendments to the law or for action by the SCER. It covers the composition of election committees, voter registration, boundary delimitation, candidate nominations, voting and counting processes, election campaigns and finance, local council elections, and other matters. The report also contains a draft election law which incorporates the changes recommended in the report. The report is available in Arabic and English on the IFES website (www.ifes.org).

"It is now up to the SCER, the government and Parliament to consider the recommendations in the IFES report and the proposals submitted by political parties so that amendments to the law can be made well before next year's elections," Dr. Harris said.

He added that IFES has begun a new project to review Yemen's party law, using a similar process of consultation and dialogue with political parties and NGOs.

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A summary of the IFES report and the main recommendations follows.

IFES is an international, non-profit organization that supports the building of democratic societies by providing expert technical assistance in all areas of democratization and civic education. IFES has worked in Yemen since 1993 and has had an office in Sana'a since 1999. IFES-Yemen is providing training and locally defined technical assistance to the Yemeni Supreme Commission for Elections and Referendum.



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ELECTION LAW REFORM IN YEMEN: FINAL REPORT ON THE PUBLIC POLICY DIALOGUES, JANUARY 2004 – JANUARY 2005

SUMMARY

OUTLINE OF THE PROJECT

While the 2003 parliamentary elections in Yemen were generally well-conducted and a significant improvement on previous elections, they demonstrated that amendments needed to be made to the election law (General Elections and Referendum Law No. 13, 2001) to improve the impartiality and transparency of the electoral process and to deal with a number of omissions, procedural gaps and technical contradictions. These matters need to be addressed before the presidential and local council elections scheduled for 2006.

In January 2004, IFES completed an in-depth analysis of Yemen's election law, and identified five priority areas that needed addressing before the 2006 elections: the statutory voter registration update schedule, dispute resolution mechanisms, the ballot counting venue, the process for appointing members of election Sub-committees, and local council election procedures. With the funding support of The United States Agency for International Development (USAID), IFES then launched the first phase of a public policy dialogue through a series of meetings with a broad range of stakeholders (including political parties, local and international NGOs, and the Supreme Commission for Elections and Referendum (SCER)) to discuss options for reforming the election law in each of the five priority areas.

IFES' developmental approach to promoting election law reform in Yemen incorporates international norms and lessons learned from similar IFES projects in other countries. In Yemen, IFES implemented country-tailored approaches designed to:

1. Strengthen Yemen's election procedures by developing workable alternatives that take into account stakeholders' concerns and are consistent with international norms and standards.
2. Provide a neutral venue for stakeholders to express their concerns about practical operations in these areas and present their suggestions for improvements.
3. Generate stakeholder buy-in to transparent, participatory approaches to law reform as part of strengthening democratic governance.
4. Offer comparative examples of how specific areas of election law have been handled in other developing democracies.

IFES' report on Phase One of the election law reform dialogue was issued in August 2004. Phase Two took place between October 2004 and January 2005, with the funding support of the Middle East Partnership Initiative (MEPI), using the same consultative process with a broad range of stakeholders as in Phase One. The

discussions in Phase Two concentrated on a number of election law reform matters that were not discussed in Phase One, although inevitably there was some overlap. IFES identified the matters for discussion in Phase Two in several ways: through analysis of the current election law, from the SCER's book on the 2003 election,¹ from international NGOs' reports on the 2003 election,² from stakeholders' comments during Phase One of the project, and from discussions with participants in a recent IFES analysis of Yemen's electoral system.³ Stakeholders were also encouraged to raise other issues.

The final report deals with the matters discussed in Phase Two and some of the outstanding matters from Phase One. It provides some background information and recommendations concerning matters discussed in Phase One, and then covers the issues and options discussed with stakeholders in Phase Two, summarizes the views of stakeholders, and outlines IFES' conclusions and recommendations for amendments to the election law or for action by the SCER. Annexes to the report list the recommendations, the participants in Phases One and Two of the public policy dialogue process, and provide a draft election law incorporating the amendments recommended in the report.

SUMMARY OF MAIN RECOMMENDATIONS

The following is a summary of the main recommendations in IFES' final report, grouped by topic. The full report and the draft amendments to the election law should be consulted for the details.

Voter Registration and Election Committees

- The Supreme Commission should determine and announce the selection criteria for chairs and members of voter registration and election committees for the 2006 elections as soon as practicable.
- The Supreme Commission should have flexibility to determine the committee structure for conducting local council elections simultaneously with presidential and parliamentary elections.
- Each Supervisory Committee should consist of a chair and four members, including at least two women from the governorate concerned. All chairs and all members of Supervisory Committees should be non-partisan.
- No Main Committee or Sub-committee should have a majority of members from one party or a majority of members from parties that are, in the opinion of the Supreme Commission, allied or aligned parties.
- The membership of each Main Committee should include at least one woman from the constituency concerned. When a woman member of a Main Committee is carrying out her duties as a member of the Committee, she may be accompanied by another woman or by a family member to act as a companion, provided that

¹ Republic of Yemen, Supreme Commission for Elections and Referendum, *2003 Parliamentary Elections. Documentation of Boundary Delimitation, Voter Registration and Election Results*, Sana'a, December 2004.

² IFES, *IFES Yemen Post-Electoral Assessment*, May 2003; National Democratic Institute (NDI), *April 27, 2003 Parliamentary Elections In Yemen: Final Report*; United Nations Development Programme (UNDP), *Electoral Support Project for the Supreme Commission for Elections and Referenda of Yemen: Final Report*; UNDP, *Electoral Needs Assessment*, February 2004.

³ IFES, MENA Strategy for Election Support, *Yemen: A Technical Analysis and Needs Assessment of the Electoral System*, September 2004.

the companion must take no part in the proceedings of the Committee, must not influence the member of the Committee, and must not disclose any information he or she may acquire in carrying out the role of a companion.

- Before taking office, all chairmen and members of Supervisory Committees and voter registration and election committees should, in front of witnesses, have to read aloud and sign a statement promising to fulfill their duties impartially and in accordance with the policies and directions of the Supreme Commission.

Registration of Voters

- A place of work should not be a voting domicile.
- A voter should have to be notified (unless deceased) before his or her name can be deleted from the Voters List as a result of an application by another person or by the Supreme Commission.
- The right of challenge to the Voters List for a constituency should be limited to citizens residing in that constituency, and only the objector and the respondent should have the right of appeal.
- If the Supreme Commission has reason to believe a person whose name appears in a Voters List is not eligible to be registered or is registered in more than one constituency:
 - the Supreme Commission should be able, during the review and update period and the subsequent addition and deletion period, to request the Main Committee to delete the name of that person from the List;
 - after a Main Committee has dealt with applications for additions and deletions but before the Voters List becomes final, the Supreme Commission should be able to apply to a Court of First Instance for the deletion of the name of the voter, provided the Supreme Commission has notified the voter concerned (if not deceased) of the reasons for its belief and its intention to apply to the Court, and the Supreme Commission has publicly announced the names of the registered voters that it believes to be ineligible and that it intends to apply to the court for their removal from the List.
- Before Voters Lists become final, the SCER should have the power to correct errors in a Voters List, and to file a challenge in a Court of First Instance against any entry in a Voters List, provided it has previously notified the voter concerned of its intention to do so. Both the SCER and the voter concerned should have the right of appeal to a Court of Appeal for a final decision.
- Posting of Voters Lists in public places within the constituency:
 - the initial Voters Lists should be posted throughout the 30-day biennial review and pre-election update periods;
 - the corrected Voters Lists should be posted for 7 days after the review and pre-election update periods;
 - the final Voters Lists should be posted for 7 days.
- A political party should have the right to obtain from the Main Committee photocopies of any Voters List that is publicly displayed, at a uniform cost that is set by the Supreme Commission. The headquarters of a political party should have the right to obtain from the Supreme Commission in electronic form, a copy of any Voters List that is publicly displayed, with the uniform costs and technical specifications set by the Supreme Commission. A party or person who obtains a copy of a Voters List should be able to use it only for purposes relating to the registration of voters, or in connection with an election or referendum. It should be an offence to use a List or its information for other purposes, or to sell it, or to use it for commercial purposes, or to provide it to any unauthorized person.

- It should be an offence for a person to apply to register as a voter while knowing that he or she is not eligible for registration, and for anyone to assist the registration of another person while knowing that he or she is not eligible for registration.

Boundary Delimitation

- The election law should state the general procedures for the boundary delimitation process, so that:
 - the boundaries of parliamentary constituencies and local electoral constituencies are revised after each population census, according to the usually-resident populations;
 - the Supreme Commission cannot consider political data when deciding constituency and district boundaries and cannot incorporate political data into a delimitation database;
 - the Supreme Commission must publish its proposed boundaries for the constituencies within each governorate and give the specific reasons for them in terms of the statutory criteria. The Supreme Commission must then give political parties, local councils, and any other person or organization it considers appropriate, a reasonable opportunity to comment on the manner in which the proposed boundaries comply with the statutory criteria. The Supreme Commission must have to consider those comments before deciding the final boundaries, and must publish the final boundaries showing how they comply with the statutory criteria, and must prepare new Voters Lists according to the new boundaries;
 - the new boundaries for parliamentary constituencies should come into force at the next general election for the House of Representatives, and the new boundaries for the local electoral constituencies should come into force at the next general election for the local councils.

Nomination of Candidates

- Any registered voter in the constituency concerned should have the right to challenge a committee's decision to refuse or accept a nomination application, with the parties to the case then having the right to appeal the committee's decision to the Court of Appeal in the governorate.
- Where a committee refuses an application to be a candidate, it should have to provide the applicant with a written statement of the specific reasons for its decision.
- The candidate nomination period for parliamentary and local council elections should be reduced from 10 days to 7 days, with male Independent candidates being required to obtain 200 signatures from at least one-third of centers. A woman should not be required to obtain any signatures for nomination as an Independent candidate.
- There should be no requirement for an *amin/akel* or a judge to verify the endorsements from voters obtained by an applicant to be an Independent candidate. Instead the applicant should have to ensure and declare that each voter endorsing his or her candidacy has personally signed the form, with a false declaration resulting in refusal of his or her application and liability to prosecution.
- A political party should only be able to withdraw its endorsement of a candidate during the nomination period, and should then be able to endorse another candidate before the end of the nomination period. A candidate from whom a

party withdraws its endorsement should be able to run as an Independent candidate after completing such nomination application procedures as the Supreme Commission requires in the period remaining before the close of nominations.

- The deadline for a person to withdraw his or her application to be a candidate should be 2 days after the end of the nomination period.
- The fee to be a candidate for election to the local council election of an administrative district should be half the fee to be a candidate at a parliamentary or governorate council election. The fee to be a candidate at a parliamentary or governorate council election should be increased to RY10,000. A candidate should have to deposit the nomination fee in cash into the relevant local council's bank account and include the receipt with their nomination application.
- The requirement that 'any public official in an administrative district' should have to resign 3 months before the opening of nominations in order to be eligible to be a candidate in a constituency in which he or she works should be removed. However the penalty for any public official convicted of coercion of voters or abuse of authority over voters should be a maximum of 2 years imprisonment and loss of office.
- If the preliminary list of candidates for a constituency contains fewer than two names, the nomination period should be extended by 2 days, with consequential reductions in the periods for filing and deciding challenges.
- A supplementary election should be held:
 - if a candidate dies after the final list of candidates has been issued and before the close of voting on election day;
 - if the final list of candidates for a constituency contains fewer than two names.
- If a candidate dies after the close of voting but before the final result is officially declared, the official count should be completed. If the deceased candidate obtained a relative majority of valid votes, the seat should be declared vacant and a by-election held.
- A person should not be able to be a candidate at the same election for more than one governorate council or for both a governorate council and the local council of an administrative district.

Voting and Counting Processes

- Each male and female Sub-committee should count the votes it has issued.
- If a candidate fails to appoint a representative to a Main Committee or Sub-committee, or if an appointed representative does not attend, the committee should have to record that fact in its minutes and should then carry out its duties in his or her absence.
- If one member of a Main Committee or a Sub-committee is absent, the other two members should record that fact in the minutes and should then carry out the committee's duties in his or her absence.
- A committee member should have the right to refuse to sign the committee's minutes provided he or she enters a written statement of the specific reasons for refusal in the committee's records.
- Copies of the count or aggregation results and the minutes recording the final results should be given to candidates or their representatives and should be publicly displayed for 3 days at the location of the committee.
- If there is equality of votes, the Main Committee should, at a time set by the SCER and under its supervision and in the presence of candidates or their representatives, re-examine the validity of all the votes cast in the constituency and should then

recount all the votes. Only if the votes are equal after the recount should the winning candidate be decided by lot.

- A voter should not have the right to vote at any center if a presidential election or a referendum is combined with parliamentary elections or with local council elections.

Election Campaigns and Finance

- The Supreme Commission's instructions to the official media should include guidelines relating to coverage of the incumbent President's daily activities during the campaign period for a presidential election at which the President is a candidate.
- Donations to presidential candidates:
 - the term 'donation' should be defined to include cash and non-cash contributions;
 - an applicant to be a presidential candidate should be required to appoint a person to be responsible for receiving donations on behalf of the candidate, and for ensuring that proper and accurate records are kept of all donations received by or on behalf of the candidate, including the true name of each donor and the amount donated;
 - a person making a donation that exceeds YR10,000 should have to provide the person receiving the donation with the true name of the donor and the reasonable market value of any non-cash donation;
 - once a person is endorsed as a presidential candidate, the person appointed by the candidate should have to notify the Supreme Commission in writing within 48 hours of the true name of any donor who has previously made a single donation to the candidate that exceeds YR100,000 or whose total donations exceed YR200,000, and the amount donated;
 - during the period between endorsement of a presidential candidate by the House and the declaration of the final result of the presidential election, the person appointed by the candidate should have to notify the Supreme Commission in writing within 48 hours of the true name of any donor who makes a single donation to the candidate that exceeds YR100,000 or whose total donations to the candidate exceed YR200,000 since the candidate announced his intention to run for the presidency, and the amount donated;
 - when the Supreme Commission receives notifications of donations to presidential candidates, it should be required to publish the names of the donors and the amounts donated within 48 hours.
 - it should be an offence to fail to comply with the law regarding donations to presidential candidates.
- By the end of 2007, and following consultations with political parties and other organizations it considers appropriate, the Supreme Commission should publish a report recommending whether campaign spending limits should be introduced for presidential, parliamentary or local council elections, and whether disclosure of donations should be introduced for parliamentary and/or local council candidates. If the Supreme Commission does recommend the introduction of campaign spending limits or disclosure of donations, the report should state the limits and disclosure levels that should apply and the mechanisms by which they would be enforced.

Other Matters Relating to the Election Law

- The law should state that the Supreme Commission is the principal and independent adviser to the Government and the House of Representatives on electoral matters. Within 12 months after each general election and referendum, and following consultations with political parties and with any other organizations it considers appropriate, the Supreme Commission should be required to publish a report on the conduct of the election, including any changes it recommends to the law.
- The Supreme Commission should make it clear before each election and referendum that it will refer any person who violates the election law to the Office of Public Prosecutions.

Other Matters Relating to Local Council Elections

- The Supreme Commission's manual for local council elections should include the procedures to be used for conducting the elections based on those required for parliamentary elections, with appropriate changes according to the different nature of local elections.
 - The Supreme Commission should consider decentralizing the printing of local council ballot papers, provided that political parties and NGOs are able to monitor the process.
 - The Supreme Commission should set the timetable for the different phases of the 2006 election to give it as much time as possible between the finalization of the lists of candidates and election day.
 - The Supreme Commission should discuss with the Ministry of Local Administration:
 - the issues concerning the number of local electoral constituencies required in administrative districts with small populations, including whether there should be an amendment to the Local Authority Law to have fewer than 18 elected members in those administrative districts;
 - whether the Local Authority Law should be amended so that a vacancy arising more than 12 months before the end of the council's term is filled by the highest polling unsuccessful candidate at the previous local council elections, with a by-election being held if that person does not accept the position.
-